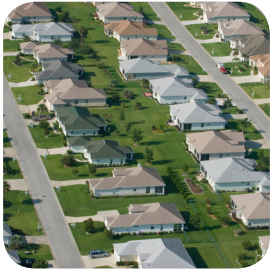


To the Point!

legal, operations, and strategy briefs for financial institutions

June 13, 2013



American Bankers Association and Others Request Guidance on the New Mortgage Lending Rules and Fair Lending

The American Bankers Association and other bank and mortgage associations have sent a joint letter to the CFPB and HUD identifying as potentially “incompatible” the ability to repay requirements of the new mortgage rules and the HUD final rule on disparate impact under the Fair Housing Act.

The associations expressed their concern that the new mortgage rules will result in tightened credit standards that will be neutral on their face but may result in disparate impact for certain borrowers, possibly including borrowers in a protected class. The letter requests written guidance from the agencies that compliance with the ability to repay requirements will be a sufficient “business necessity” to avoid liability under the Fair Housing Act and the Equal Credit Opportunity Act, if such compliance with the rules results in a disparate impact to borrowers in a protected class. In particular, the associations have requested assurances that if a bank determines to make only loans that satisfy the Qualified Mortgage standards (including the 43 percent debt-to-income requirement or eligibility for Fannie Mae and Freddie Mac purchase or guaranty) the bank will not be subject to disparate impact liability under fair lending laws.

Banks should monitor CFPB and HUD issuances for further activity on this issue as they continue their preparation to comply with the new mortgage rules beginning in January 2014.



CFPB Study on Overdraft Programs

The CFPB issued its study on overdraft programs on June 11. The study contains the Bureau’s market research on overdraft programs, including median overdraft fees for large institutions (\$34) and small institutions (\$30), average annual fees paid by consumers that experience overdrafts (\$225), and the percentage of consumer checking account fees attributed to overdraft charges (61%), among other factors.

The study raised concerns that the complexity of overdraft programs can make it difficult for consumers to understand the program and then anticipate and take action to avoid fees. Complex fee structures, overdraft coverage limits that depend of many factors (some not known by the consumer) and transaction posting orders were specifically identified as factors that affect the overdraft fees paid by consumers but are difficult for consumers to understand. In addition, the CFPB noted that overdraft program terms vary significantly between banks, hampering the consumer’s ability to compare the cost of overdrafts between banks.

The study also found that a consumer’s decision to opt-in to allow overdrafts on ATM withdrawals and debit card transactions varied substantially between banks, and consumers who opted-in experienced more overdraft fees and higher involuntary account closure rates.

The CFPB plans to continue to study bank overdraft programs and concluded that it will establish rules that provide consumer protection if it determines that bank overdraft programs are not fair, transparent and competitive and do not allow consumers to control their economic lives.



Mandatory Arbitration

As mandated by the Dodd-Frank Act, the CFPB plans to continue its study of arbitration agreements by conducting a nationwide telephone survey of consumer credit card customers to explore their awareness of dispute resolution procedures in their credit card agreements and their understanding of such provisions. The survey will seek information on consumers' opinions of arbitration versus litigation in resolving disputes, but will not gather data on consumer satisfaction with the outcomes of arbitration or litigation proceedings.

The CFPB has posted the proposed survey questions and has requested comment on the survey. Comments must be received by August 6, 2013.



CFPB Update on Mortgage Rules

Mortgage Rules Compliance Guides

The CFPB has issued compliance guides for small entities on the Loan Originator Rule and Mortgage Servicing Rules. Although targeted at small entities, we encourage all mortgage originators and servicers to become familiar with the guides. They are written in question and answer format, include information on required disclosures and how to use model forms to comply with the disclosure requirements, and provide implementation tips that may be helpful in developing a compliance plan.

Interim Examination Procedures

The CFPB has issued Interim Examination Procedures for the Truth in Lending Act and the Equal Credit Opportunity Act that incorporate some of the new requirements of the mortgage rules, generally effective in January 2014. These Interim Examination Procedures include examination procedures for the following aspects of the new mortgage rules: qualification and screening standards for loan originators; prohibitions on steering incentives and "dual compensation"; borrower protections for higher-priced mortgage loans; prohibitions on waiver of consumer rights and mandatory arbitration clauses; expanded requirements to provide appraisal reports and valuations; and prohibitions on financing credit related mortgage insurance. The CFPB will publish additional revisions to the Examination Procedures to address the Ability-to-Repay and mortgage servicing rules in the future.

We encourage banks to consider these revised Interim Examination Procedures in connection with their implementation activities since they identify issues the CFPB will review in examination for compliance with the new mortgage rules.

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